

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE ANDREU,)	
)	
Plaintiff,)	
)	Case No. 07 C 06132
v.)	
)	Judge Der-Yeghiayan
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

**APPENDIX OF EXHIBITS
TO
DEFENDANT UNITED PARCEL SERVICE INC.'S REPLY TO
PLAINTIFF'S LOCAL RULE 56.1(b)(3) RESPONSE TO DEFENDANT'S
RULE 56.1 STATEMENT OF UNCONTESTED MATERIAL FACTS
AND RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS**

Complaint
Supplemental Declaration of Kerry Snyder
Supplemental Declaration of Tom Haefke
Andreu Deposition Excerpts (including Dep. Exs. 7 and 10)
Bast Deposition Excerpts
Del Dotto Deposition Excerpts
Snyder Deposition Excerpts
Ziltz Deposition Excerpts

DATED: February 11, 2008

UNITED PARCEL SERVICE, INC.

By: /s/ D. Scott Watson
One of Its Attorneys

John A. Klages, #06196781
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on February 11, 2008, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s/ D. Scott Watson

COMPLAINT

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL DISTRICT
COUNTY OF DUPAGE

JOSE ANDREU,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC.,

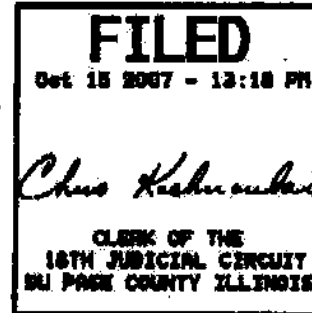
Defendant.

)
) 2007L001072
)

) Status Date: 01/14/08

) Next date: 04/01/08

) Assigned To: 2010
)
)
)



COMPLAINT

Plaintiff, JOSE ANDREU, by and through his attorneys, THE COFFEY LAW OFFICE, P.C., and pursuant to leave of court, complains against Defendant UNITED PARCEL SERVICE, INC., as follows:

Nature of Case

1. Plaintiff brings this action against Defendant to recover damages proximately caused by Defendant's illegal retaliatory discharge in violation of the Illinois Worker's Compensation Act, 820 ILCS 305/1 *et seq.*, and the common law and public policy of the State of Illinois.

Jurisdiction and Venue

2. Plaintiff, Jose Andreu (hereafter "Jose"), is an individual residing at all relevant times in Chicago, Illinois, County of Cook.
3. Defendant, United Parcel Service, Inc. (hereafter "UPS"), is an Ohio corporation registered and licensed to do business in Illinois.

4. Venue is proper in this Court in that Defendants' illegal acts complained of herein took place within this Court's geographical jurisdictional boundaries at UPS' Addison, Illinois facility.

Relevant Facts

5. Jose began his employment with UPS in or around September 1996.
6. Starting in 2003, Jose began working for UPS in the position of package driver. In this position, among other duties, he reported each work day to UPS' Addison, Illinois facility and delivered parcels in UPS' vehicles, departing from and returning to the Addison facility each work day.
7. On or about January 24, 2005, Jose injured his back at work while on his assigned route delivering packages (hereafter the "work accident").
8. He immediately called into UPS and reported the work accident and his resulting back injuries.
9. Later in the day on January 24, 2005, one of Jose's superiors, Dave Ziltz, met Jose out on his route. Upon meeting Jose out on his route, Mr. Ziltz stated to Jose that he believed Jose was lying about the work accident and/or related injuries, and faking his pain.
10. At various times subsequent to January 24, 2005, Mr. Ziltz repeated his assertions and belief that Jose was lying about the work accident and/or related injuries, and faking his pain.

11. Also on January 24, 2005, upon Jose's return to UPS' Addison facility at the end of his work day, he sat down with Mr. Ziltz and observed Mr. Ziltz type the work accident and related injury information into a computer. He also observed and listened as Mr. Ziltz called UPS' worked compensation insurance carrier, Liberty Mutual, and reported the work accident and related injuries.
12. On January 25, 2005, Jose was examined by UPS' physician, Dr. Anthony Tesmond, in connection with the injuries he sustained from the work accident.
13. Following the work accident, Jose missed work on January 25th and 26th.
14. Upon returning to work on January 27, 2005, Jose advised Dave Ziltz that he was still experiencing back pain from the injuries he sustained from the work accident.
15. In January and February 2005, Jose was examined several additional times by Dr. Tesmond and/ or other physicians in his office in connection with the injuries he sustained from the work accident.
16. Dr. Tesmond and/or his office notified UPS and/or its workers' compensation insurer of each and every occasion that Jose received medical treatment in connection with the injuries he sustained from the work accident.
17. In February and early March 2005, Jose sought and received additional medical treatment from his own physicians in connection with the injuries he sustained from the work accident.
18. In February and early March 2005, Jose's physicians notified UPS and, in some instances, Jose's direct supervisors, of Jose's ongoing treatment for the injuries he sustained from the work accident, his prognosis and/or ability to return to work.

19. On or about February 9, 2005, Dave Ziltz met Jose while he was on his route delivering packages. Upon his arrival at Jose's truck, Mr. Ziltz was angry and yelling at Jose. Mr. Ziltz accused Jose of lying about the number of packages and/or stops he had left for the day in an earlier communication Jose had with the Addison facility. Dave Ziltz told Jose he would be fired.
20. On or about February 11, 2005, Jose informed his superiors that he could no longer perform his duties due to the pain he was experiencing from the work accident and related injuries. He subsequently missed several days of work, and continued to receive medical treatment. He returned to work on or about February 17, 2005.
21. On March 4, 2005, Jose's superior, Kerri Snyder, told Jose that his employment with UPS was terminated effective immediately for alleged being dishonest on February 9, 2005. Mr. Snyder then asked another supervisor who was present to escort Jose off of the premises.
22. At all relevant times, Jose's performance met or exceeded UPS' legitimate expectations. Jose was not dishonest on February 9, 2005, and did nothing to legitimately warrant the termination of his employment.

**UPS TERMINATED JOSE'S EMPLOYMENT IN RETALIATION FOR HIS
PROTECTED ACTIVITIES IN VIOLATION OF THE ILLINOIS WORKERS'
COMPENSATION ACT, COMMON LAW AND PUBLIC POLICY**

23. Jose's reporting the work accident and related injuries to UPS on January 24, 2005, and seeking medical treatment for such injuries commencing on January 25, 2005, and continuing through the day UPS terminated his employment (i.e., March 4, 2005), all as described above, are activities protected by the Illinois Worker's Compensation Act, 820 ILCS 305/1 *et seq.* (the "Act") .
24. UPS was aware of Jose's protected activities under the Act as described above at the time it decided to terminate his employment.
25. Jose's protected activities under the Act were a motivating factor behind UPS' decision to terminate his employment.
26. As such, UPS' termination of Jose's employment on March 4, 2005, was causally related to his protected activities under the Act.
27. UPS' termination of Jose was therefore an illegal retaliatory discharge in contravention of Illinois public policy as stated and set forth in the Act.
28. As a direct and proximate result of UPS' illegal termination of his employment, Jose has suffered a loss of income in the form of wages and prospective retirement benefits, social security and other employment benefits, emotional pain, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, and he is expected to incur future damages.

29. The above described conduct by UPS was wilful and wanton, and with reckless disregard and indifference to the law and the public policy of Illinois, and to Jose's rights. UPS should therefore be subject to punitive damages as an example to deter others from engaging in conduct of this kind.

Wherefore, Plaintiff, JOSE ANDREU, respectfully prays unto this Honorable Court as follows:

A. Order UPS to make him whole by paying him appropriate amount of lost wages, reimbursement for lost pension, social security and other benefits and out-of-pocket expenses, plus pre-judgment interest in an amount to be shown at trial;

B. Order UPS to immediately reinstate him to his former position; or, in the alternative, order Defendants to pay Jose an appropriate amount of front pay;

C. Order UPS to pay him punitive and compensatory damages in the maximum amount allowable under the law;

D. Order UPS to pay his costs incurred in bringing this action, including, but not limited to, expert witness fees;

E. Try all issues of fact to a jury; and,

F. Grant such other relief as the Court deems just.

Respectfully submitted,
Plaintiff, JOSE ANDREU

By: 

Timothy J. Coffey, Esq.
THE COFFEY LAW OFFICE, P.C.
DuPage County Attorney No. 25571
Attorneys for JOSE ANDREU
1403 E. Forest Avenue
Wheaton, IL 60187
(630) 534-6300

SUPPLEMENTAL DECLARATION OF KERRY SNYDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE ANDREU,)	
)	
Plaintiff,)	
)	Case No. 07 C 0473
v.)	
)	Judge Der-Yeghiayan
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

SUPPLEMENTAL DECLARATION OF KERRY SNYDER

I, Kerry Snyder, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

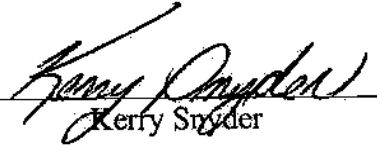
1. I have been employed by UPS since 1984. In 2005, I was the Business Manager for the Aurora Center in UPS's Addison, Illinois facility.
2. There was no need for me to do a "full investigation" of whether Jose Andreu was the appropriate person to make the pick-up at Bernia on February 9, 2005. It is the job of my management team to identify the appropriate person to do the Bernina pick up and I was told that the employee was resisting working as directed.
3. I did not decide that Andreu needed to make the Bernina pick-up but I did affirm the decision of my management team.
4. Although Guyton was originally taken out of service for allegedly making a "sex remark", after investigation the matter was resolved with Guyton being returned to work with a verbal warning.

5. There was no issue regarding the timeliness of the Guyton and Blackman grievances as the issues were resolved with the Union through the grievance process and the discipline imposed prior to my signing off on the grievances on March 2, 2005.
6. Neither Blackman nor Guyton were put on notice of termination for the events that occurred in February, 2005.
7. Brian Slay was initially put on notice of termination for dishonesty. His Union timely filed a grievance and the notice of termination was reduced to a warning through the grievance procedure.
8. Dave Rodriguez was returned to work through the grievance procedure after his Union filed a timely grievance.
9. Anna Brickley was returned to work through the grievance procedure after her Union filed a timely grievance.
10. Deanna Reynolds was returned to work through the grievance procedure after her Union filed a timely grievance.
11. Despite his termination on March 4, 2005, Andreu's ongoing workers' compensation costs were still factored into Aurora Center's costs.

FURTHER DECLARANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 5th, 2008


Kerry Snyder

SUPPLEMENTAL DECLARATION OF TOM HAEFKE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE ANDREU,)	
)	
Plaintiff,)	
)	Case No. 07 C 06132
v.)	
)	Judge Der-Yeghiayan
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

SUPPLEMENTAL DECLARATION OF TOM HAEFKE

I, Tom Haefke, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I have been employed by UPS since October 1, 1973. Since December, 2002, I have been the Labor Relations Manager for UPS's North Illinois District.
2. While UPS supervisors do have some disciplinary authority, they do not have the ability to unilaterally terminate a package car driver for dishonesty.
3. There was no issue regarding the timeliness of the Guyton and Blackman grievances of February, 2005 as they were already resolved and the discipline imposed prior to Snyder signing off on them on March 2, 2005.
4. Neither Blackman nor Guyton were put on notice of termination for the incidents of February, 2005.

ANDREU DEPOSITION EXCERPTS (DEP. EXS. 7 AND 10)

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 JOSE ANDREU,)
5 Plaintiff,)
6 -vs-) No. 07 C 00473
7 UNITED PARCEL SERVICE, INC.,)
8 Defendant.)
9

10 The deposition of JOSE ANDREU, called for
11 examination, taken pursuant to the Federal Rules
12 of Civil Procedure of the United States District
13 Courts pertaining to the taking of depositions,
14 taken before ZONA B. MILLER, a Notary Public
15 within and for the County of Lake, State of
16 Illinois, and a Certified Shorthand Reporter of
17 said state, at Suite 3700, 500 West Madison
18 Street, Chicago, Illinois, on the 28th day of
19 August, A.D. 2007, at 10:00 a.m.
20
21
22
23
24

ORIGINAL

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1 I will just go ahead and ask this. Do you
2 remember the name of the clinic?

3 A. I believe they call Addison Clinic.

4 Q. Do you remember where it is?

5 A. Not exactly address, but is on Grace
6 Street, Grace Avenue.

7 Q. Gray? Oh, Grace?

8 A. Grace.

9 Q. If you look at the top right-hand
10 corner of this document, sir, it indicates a time
11 in at 7:33. Is that a.m.?

12 A. Yes.

13 Q. So you went in the morning before what
14 would be your normal work shift, correct?

15 A. Yes.

16 Q. Now, as I look down a little further on
17 this document, there's a section that says
18 Diagnosis. Do you see where I'm referring to?
19 About two-thirds of the way down the page, sir.

20 MR. COFFEY: Diagnosis, Scott?

21 MR. WATSON: Yes.

22 BY THE WITNESS:

23 A. Yes.

24 BY MR. WATSON:

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1 Q. And as I read this, I just want to make
2 sure we're on the same page, that diagnosis was a
3 low back strain?

4 A. That's what they put in there.

5 Q. And under Additional Comments -- I'll
6 read this. And I know it's doctor's writing, so
7 it's tough for all of us. But as I read this it
8 says, "Ice or Advil as directed." Do you read
9 that differently?

10 A. No.

11 Q. And towards the top of the page,
12 actually, about a quarter of the way down where it
13 says Disability Status, the box or line for None
14 is marked, correct?

15 A. Yes.

16 Q. So you weren't given any work
17 restrictions upon this initial visit?

18 A. No.

19 Q. And did you -- you said you were given
20 a copy for you and one for Kerri Snyder. Did you
21 give Mr. Snyder his copy?

22 A. Yes.

23 Q. Did you give it to him directly?

24 A. Yes.

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 Q. Now, Mr. Andreu, according to paragraph
2 15 of your complaint, it indicates that you missed
3 work on January 25 and 26; that you didn't work
4 those days; is that correct?

5 A. I believe so. It was recommended by
6 the doctor.

7 Q. Is it recommended by the doctor,
8 though? Is that recommendation anywhere on this
9 form?

10 A. Yes, the verbal.

11 Q. Excuse me?

12 A. Verbal. He said take couple of days
13 off and ice it out.

14 THE COURT REPORTER: I'm sorry?

15 BY THE WITNESS:

16 A. Ice it out.

17 BY MR. WATSON:

18 Q. Take a couple of days off and ice it
19 out?

20 A. Yes.

21 MR. COFFEY: Was your final word "verbal"?
22 Just "verbal," is that what you said?

23 BY THE WITNESS:

24 A. Yes.

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CONFIDENTIAL

1 decision as to who would do which route that day?

2 A. I have no idea.

3 Q. And that would also be the same answer
4 for previous times when I asked you about who
5 assigned routes?

6 A. Right.

7 Q. And you were okay to work as a package
8 car driver that day, correct?

9 A. Yes.

10 Q. You weren't working under any
11 restrictions at that point in time?

12 A. I was taking Advil four times a day
13 and...

14 Q. When you left the UPS facility that
15 day, do you remember how many packages you had on
16 your vehicle approximately?

17 A. No idea.

18 Q. About how many stops?

19 A. You can't count the stops in the
20 morning. The truck is full. You can't even walk
21 in there.

22 Q. Just so this is clear to other people
23 who may eventually read this transcript, I think
24 people understand how many packages. In UPS

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1 language, what's a stop?

2 A. A stop is --

3 MR. COFFEY: I'll just object to the form of
4 the question.

5 Answer if you can.

6 BY THE WITNESS:

7 A. Let's say I got a delivery for you.
8 This one stop I got to make and complete.

9 BY MR. WATSON:

10 Q. So if you came to deliver to this
11 office, this would be a stop?

12 A. Yes.

13 Q. And it's one stop regardless of whether
14 there's one package or a hundred packages that
15 you're delivering to this particular --

16 A. Yes.

17 Q. -- address, correct?

18 A. Yes.

19 Q. On that particular day, Mr. Andreu, did
20 you receive any additional packages after you left
21 in the morning? Was there a meet point at some
22 time during the day where you received some
23 additional packages?

24 A. Yes.

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1 Q. And you were contacted by UPS that day
2 to do a pickup at Bernina?

3 A. Yes.

4 Q. What is Bernina?

5 A. Is the name of a company.

6 Q. Do you know what they do there?

7 A. I have no idea.

8 Q. Had you ever made a pickup at Bernina
9 before?

10 A. Yes.

11 Q. About how many times?

12 A. I don't remember.

13 Q. More than five?

14 A. I don't remember.

15 Q. No idea, just you made it before?

16 A. Yes.

17 Q. It could be one, it could be 20 times
18 before?

19 A. I don't remember exactly how many
20 times.

21 Q. Do you remember approximately how many
22 times?

23 A. No.

24 Q. When were you contacted about making

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 this pickup at Bernina?

2 A. I believe it was around 3:00.

3 Q. And what do you base that on?

4 A. I'm sorry?

5 Q. What do you base that on?

6 A. At that time I had not taken lunch and
7 I was hungry. I was planning to go and take
8 lunch.

9 Q. Anything else?

10 A. Not that I can remember.

11 Q. Excuse me, sir?

12 A. I don't remember.

13 Q. So you were contacted by UPS to make
14 this pickup. Do you remember who contacted you?

15 A. No idea.

16 Q. How were you contacted?

17 A. Through the DIAD board.

18 Q. What's called an ODS message?

19 A. ODS message, yes.

20 Q. And what did the message say?

21 A. Break your route and go pick up Bernina
22 ASAP.

23 Q. Break your route and go pick up Bernina
24 ASAP?

JOSE ANDREU, AUGUST 28, 2007
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1 A. Yes.

2 Q. You didn't say a number?

3 A. Yeah.

4 Q. Are you sure about that?

5 A. Yes.

6 Q. Did you testify differently in your
7 unemployment hearing?

8 A. I got another text message saying about
9 how many stops you got.

10 Q. So that was the next text message?

11 A. Yeah.

12 Q. Okay.

13 A. And I said I got 60 stops.

14 Q. Did your -- let me take them one at a
15 time. The message from UPS asked -- did it just
16 ask how many stops you have left?

17 A. I don't remember exactly.

18 Q. You're not sure if it said anything
19 else?

20 A. No, I'm not sure.

21 Q. Your response, did it just say about 60
22 stops left or did it say something else?

23 A. That I wanted to take a lunch and that
24 breaking the route was going to take me -- put me

JOSE ANDREU, AUGUST 28, 2007
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1 behind and I was going to come back late to the
2 building.

3 Q. And those are your recollections of the
4 exact words of your response?

5 A. I think so.

6 Q. So you think so. You're not positive.
7 But the best of your recollection, that's your
8 response?

9 A. Yes.

10 Q. Did you say late to the building or did
11 you say a time?

12 A. I think I say around 8:00.

13 Q. But you're not sure?

14 A. I'm not sure.

15 Q. Did your response say anything else?

16 A. I don't remember.

17 Q. Did you get any additional messages in
18 any form from UPS?

19 A. At one point I call in.

20 Q. Okay. Was that point the next message
21 or --

22 A. Yes.

23 Q. Before you had heard back from UPS?

24 A. Yes.

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CONFIDENTIAL

1 Q. You call in?

2 A. Yes.

3 Q. When did you call in?

4 A. In between all these messages; call in
5 and I explain.

6 Q. But do you remember what time you
7 called in?

8 A. No, I don't remember.

9 Q. So you call in. Who did you talk to?

10 A. I don't remember who I talk to. At
11 that time I got -- the person I talked to say,
12 "Forget about it. Somebody else going to pick it
13 up."

14 Q. But you don't know who this person is?

15 A. No.

16 Q. Was there anything else in that
17 conversation?

18 A. Not that I remember.

19 Q. And you say you called -- I'm sorry.

20 A. It might be some. I can't remember
21 right now.

22 Q. You say you called in. Did you call in
23 on your cell phone?

24 A. Yes.

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1 packages...

2 A. In the truck.

3 Q. How many packages were in the truck at
4 the time?

5 A. I don't know.

6 Q. Do you know about?

7 A. I don't know.

8 Q. Do you know what Mr. Ziltz had been
9 told about how many packages you had claimed
10 earlier?

11 A. I don't know what they been told.

12 Q. You don't even know who you had
13 communicated with at UPS --

14 A. No.

15 Q. -- correct?

16 Where did this happen? Where did --
17 you say in Paragraph 21 that Mr. Ziltz met you on
18 your route. Where did he meet you, at Bernina?

19 A. Bernina.

20 Q. Was anybody else there?

21 A. No.

22 Q. When he said these things to you, how
23 did you respond?

24 A. I didn't say anything. I was sitting

JOSE ANDREU, AUGUST 28, 2007
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1 Q. And she says, "You need to come and see
2 Kerri Snyder"?

3 A. Yes. And we walk together to the
4 office.

5 Q. Did you have any conversation with her
6 on the way -- on that trip to the office?

7 A. Very -- I don't remember.

8 Q. How long a walk was it from wherever
9 she met you to the office?

10 A. I don't remember.

11 Q. A minute? A minute walk?

12 A. I don't remember.

13 Q. Is it possible it was shorter?

14 A. I don't know.

15 Q. Is it possible -- you just don't know?
16 It could have been any amount of time; a short
17 amount of time --

18 A. I don't remember.

19 Q. So you go with Miss Treadwell to
20 Mr. Snyder's office?

21 A. Yes.

22 Q. Who's there?

23 A. Mr. Snyder.

24 Q. Anyone else?

JOSE ANDREU, AUGUST 28, 2007
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1 A. No.

2 Q. Does Miss Treadwell accompany you to
3 the meeting?

4 A. Yes.

5 Q. And what happens?

6 A. Mr. Kerri Snyder ask me what happened
7 the night before, the day before. I told him what
8 happened. And he put me on notice of termination.

9 Q. When you say that Mr. Snyder asked you
10 what happened the day before and you told him what
11 happened, what all did you tell him?

12 A. I told him exactly what happens.

13 Q. As you described it here today?

14 A. Yes.

15 Q. Did you feel you got the chance to tell
16 him everything?

17 A. Yes.

18 Q. And you told him that Dave Ziltz had
19 yelled at you and called you a liar?

20 A. Yes.

21 Q. And after you had a chance to tell
22 Mr. Snyder everything he told you, you were being
23 on notice of termination, correct?

24 A. Yes.

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 BY MR. WATSON:

2 Q. Mr. Andreu, I've handed you what's been
3 marked as Andreu Exhibit 10. I'm going to ask you
4 to take a look at this document. And do you
5 recognize this?

6 A. Yes.

7 Q. What is this, sir?

8 A. This is a copy of the -- it's a copy
9 from the doctor's office.

10 Q. Is that a copy of something from the
11 doctor's office? Would this be a note detailing
12 your visit, for lack of a better description?

13 A. I don't know. Every time I went there,
14 they give me a copy, two copies; one for the
15 supervisor and one for me to give.

16 Q. Let's just see if we can't figure out
17 maybe a couple of things from this even despite
18 that.

19 If you look on the top right-hand
20 corner on Date, it says 2/10/05, is that correct?

21 A. Yes.

22 Q. Do you have any reason to believe this
23 isn't from February 10th, 2005?

24 A. No.

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 Q. And below that it says Time In: 7:39,
2 and Time Out: 7:55. If you recall, would that
3 have been in the morning or in the evening?

4 A. I believe it was morning time.

5 Q. Under Disability Status, again, as in
6 the document we looked at earlier, none is X'd, is
7 marked, is that correct?

8 A. Yes.

9 Q. Under Diagnosis, this gets a little
10 tougher with doctor writing, but I believe that
11 says lumbosacral strain, if you have any idea.

12 A. No idea.

13 Q. As you look at this doctor's note and
14 as you also recall the visit, do you recall being
15 given any restrictions on this date as with regard
16 to your ability to work?

17 A. No, no restrictions.

18 Q. Sir, looking back at your complaint
19 that we've been going through, would you look at
20 Paragraph 22, and this is on page 4, sir, it says
21 on or about February 11, 2005, you informed your
22 superiors you could no longer perform your duties
23 due to the pain you were experiencing. Is that
24 what it says? And, again, I was paraphrasing.

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1 A. Yes.

2 Q. Who did you inform?

3 A. Mr. Kerri Snyder.

4 Q. At the time you informed Mr. Snyder,
5 did you have something from a doctor saying that
6 you couldn't work?

7 A. No.

8 Q. And according to the last two sentences
9 of Paragraph 22 of the complaint you missed
10 several days of work, and continued to receive
11 medical treatment, and returned to work on or
12 about February 17th, is that correct?

13 A. Yes.

14 Q. Now, when you returned to work on
15 February 17th, did you return as a package car
16 driver?

17 A. I believe I was placed on light duty at
18 that time.

19 Q. Did you hear the term "TAW" or
20 "temporary alternative work" used?

21 A. No.

22 Q. Have you ever heard those terms before
23 with regard to --

24 A. I don't remember.

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF L A K E)

4 I, ZONA B. MILLER, a Notary Public within
5 and for the County of Lake, State of Illinois, and
6 a Certified Shorthand Reporter of said state, do
7 hereby certify:

8 That previous to the commencement of
9 the examination of the witness, the witness was
10 duly sworn to testify the whole truth concerning
11 the matters herein;

12 That the foregoing deposition
13 transcript was reported stenographically by me,
14 was thereafter reduced to typewriting under my
15 personal direction and constitutes a true record
16 of the testimony given and the proceedings had;

17 That the said deposition was taken
18 before me at the time and place specified;

19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in
23 the outcome of this action.

24 IN WITNESS WHEREOF, I do hereunto set

JOSE ANDREU, AUGUST 28, 2007
CONFIDENTIAL

1 my hand and affix my seal of office at Chicago,
2 Illinois, this 10th day of September, 2007.

3
4 Notary Public, Lake County,
5 Illinois.

6 My commission expires May 1, 2010.

7 *Zona B. Miller*
8

9 C.S.R. Certificate No. 84-0428.
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FOR I.D. 828107 128M

Jan 26 05 08:14z

p.3

FIRST VISIT

RECHECK

PATIENT DISABILITY INFORMATION

PT NAME

Andrew Jones
U-P8

DATE:

1/25/05

COMPANY NAME:

TIME IN:

7:32

TIME OUT:

8:20

ADDISON MEDICAL CENTER
501 S. GRACE STREET
ADDISON, IL 60101
630-643-4040 FAX 630-643-1050

ANTHONY G. TESMOND, D.O.
ADRIENNE BAKSINSKI, D.O.
STEVEN HEADLEY, D.O.
TED SUCHY, D.O.

DISABILITY STATUS:

TOTAL PARTIAL

NO LIMITED

NONE

DISCHARGED

LIFTING OVER LBS.
STOOPING OR BENDING
STRENUOUS LABOR
OVERHEAD REACHING
CLIMBING STAIRS/LADDERS
REPETITIVE PUSHING/PULLING
PROLONGED STANDING/WALKING
OPERATING ON/NEAR MACHINERY

DRIVING
WORK INVOLVING RAPID
ACTION OR DECISION MAKING
CLERICAL WORK ONLY
SIT DOWN WORK ONLY
GROUND LEVEL WORK ONLY
AVOID CONTACT WITH
CONTINUE MEDICATION

NO USE OF LIMITED USE OF

RIGHT LEFT

HAND ARM FOOT LEG

DIAGNOSIS:

Low Back Strain

D.O./M.D.

ADDITIONAL COMMENTS:

Dr. Lotz Adv. 1 - as direct

NEXT PHYSICIANS APPT:

(OR SOONER IF NEEDED)

PHYSICAL THERAPY APPT:

DATE:

TIME:

PLEASE RETURN THIS FORM TO YOUR SUPERVISOR

UPS 0144

FOR I.D. 8/28/07 1744

FIRST VISIT

RECHECK

PATIENT DISABILITY INFORMATION

PT NAME: Andrew, Jose

DATE: 2-10-05

COMPANY NAME: U R

TIME IN: 7:39

TIME OUT: 7:55

GRADISON MEDICAL CENTER
501 S. GRACE STREET
GRADISON, IL 60101
630-543-4040 FAX 630-543-1050

ANTHONY G. TESMOND, D.O.
ADRIENNE BAKSINSKI, D.O.
STEVEN HEADLEY, D.O.
TED SUCHY, D.O.

DISABILITY STATUS:

TOTAL _____ PARTIAL _____

NONE (8)

DISCHARGED _____

NO _____ LIMITED _____

LIFTING OVER _____ LBS.
STOOPING OR BENDING
STRENUOUS LABOR
OVERHEAD REACHING
CLIMBING STAIRS/LADDERS
REPETITIVE PUSHING/PULLING
PROLONGED STANDING/WALKING
OPERATING ON/NEAR MACHINERY

DRIVING
WORK INVOLVING RAPID
ACTION OR DECISION MAKING
CLERICAL WORK ONLY
SIT DOWN WORK ONLY
GROUND LEVEL WORK ONLY
AVOID CONTACT WITH
CONTINUE MEDICATION

NO USE OF _____ LIMITED USE OF _____

RIGHT _____ LEFT _____

HAND _____ ARM _____ FOOT _____ LEG _____

PROGNOSIS:

Lumbar and Strain

[Signature] D.O./M.D.

ADDITIONAL COMMENTS:

1) neck 2) w/pn last
3) LB 8/28/07

PHYSICIAN'S APT:

2/14/05

PHYSICAL THERAPY APT:

DATE:

UPS 0145

BAST DEPOSITION EXCERPTS

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDREU,)	
)	
Plaintiff,)	
)	
-vs-)	No. 07 C 0473
)	
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

The deposition of CHERYL BAST, called by the Plaintiff, for examination, taken pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Tamara Manganiello, Registered Professional Reporter and Notary Public, at Suite 850, 29 South LaSalle Street, Chicago, Illinois, on the 26th day of July, A.D., 2007, commencing at 8:41 a.m.

1 A. Yes.

2 Q. How do you determine which driver --
3 let me take a step back.

4 Do you determine which driver to
5 notify?

6 A. Yes.

7 Q. Who do you consult in making that
8 determination?

9 A. I will make that decision myself.

10 Q. What do you consult? Do you consult
11 any reports or any other information?

12 A. I will -- we have loops. They're
13 dispatch loops. And I'll usually go -- if I need
14 help in a certain loop, I'll go to the loop that's
15 right next to it.

16 Q. Is that like a route?

17 A. So each area -- yeah, it's a route.
18 Yes.

19 Q. So a dispatch loop is a route?

20 A. Right. Well, we have loop numbers.
21 Like 19B, 19C, 19D, that's all in one loop. So if
22 19D needs help, I'll go to 19C, 19E, someone in that
23 loop who's right next to that route.

24 Q. Okay. If a driver needs help?

1 Q. The route that Jose was on that day?

2 A. Yes.

3 Q. Did you know anything about the extent
4 of the pick-up, like how many packages needed to be
5 picked up, how heavy the packages were?

6 A. Normally, they're a large shipper.
7 That day, I don't know. I don't remember if they
8 had said they had a lot or not, but they're normally
9 on a daily basis a large shipper.

10 Q. What's that mean?

11 A. Four, five skids. It's not just like
12 one or two packages.

13 Q. Okay. At the time that you, I guess,
14 made the decision that Mr. Andreu would be -- you
15 would request this of Mr. Andreu, were you aware
16 that he had been injured January 24th of '05, just a
17 couple of weeks prior?

18 A. No, I wasn't aware of it.

19 Q. Were you aware that he was
20 suffering -- that he had had a back injury and was
21 suffering pain from that injury?

22 A. No, I was not aware of it.

23 Q. Did you -- no information from
24 Mr. Ziltz or Mr. Snyder that we had an injured

1 driver and his name is Jose Andreu?

2 A. No.

3 Q. No?

4 A. No.

5 Q. Would that have made any difference to
6 you?

7 A. No.

8 Q. Even with a heavy, multiple skids type
9 of pick-up?

10 A. No. I would have gone to that route
11 anyway first.

12 Q. And why is it that you went to his
13 route?

14 A. It's the closest route.

15 Q. And how did we know that?

16 A. Because the route location is the
17 closest to that pick-up. And, also, that route
18 doesn't have any other pick-ups, so I know he has
19 room to pick up that amount of skids.

20 Q. What route doesn't have any other
21 pick-ups?

22 A. The route that Jose was on that day,
23 the Route 59 res. route.

24 Q. He was on a residential route?

1 Q. Okay. How do you know shortly before
2 4:00?

3 A. Because I remember I had talked to
4 Jose around 4:00 o'clock, so I had to be notified
5 that the pick-up needed to be covered in order to
6 send him a message.

7 Q. When you say you talked to Jose, this
8 is when he calls you back?

9 A. Correct.

10 Q. You say it's around 4:00 o'clock?

11 A. Yes.

12 Q. What range are we looking at in your
13 memory?

14 A. Maybe five to 4:00, five after 4:00.
15 Between that time.

16 Q. So maybe 3:55 to 4:05?

17 A. Yes.

18 Q. And how do you know that?

19 A. Because that's what time it was.

20 Q. Did you write this --

21 A. I do remember it was -- I remember
22 looking at the clock at about ten after because I
23 was thinking who am I going to get to cover this,
24 because I know the other drivers in that area at

1 that time have pick-ups, as well. And I do remember
2 looking at the clock and it was about 4:10.

3 Q. Other than we see as Exhibit No. 1,
4 did you make any notes of any of this, any of the
5 times that we're going to be discussing here, any of
6 the times you've already discussed?

7 A. No. This is it.

8 Q. So you text messaged and Mr. Andreu
9 then calls back. And this is a telephone call?

10 A. Yes.

11 Q. And you get this at your office
12 telephone?

13 A. Yes.

14 Q. Where do you receive this at?

15 A. Yes. The office phone.

16 Q. What number is that office phone?

17 A. There is multiple lines in there.
18 Whatever line is free, it will just go to the next
19 line.

20 Q. If I wanted to call that number back
21 on February 9th, '05, what number would I dial?

22 A. Well, the drivers have an 800 number
23 to call. I don't know if he called that 800 number,
24 which would, you know, still go into the office or

1 Q. -- as to what time?

2 A. No.

3 Q. Were you ever asked to see if you can
4 get a record from the DIAD system or any other
5 system, computer system to verify what time your --

6 A. No.

7 Q. -- second text message would have
8 been?

9 A. No.

10 Q. What time was it?

11 A. That was probably about between
12 quarter after and 20 after 4:00.

13 Q. Probably?

14 A. I didn't look at the clock.

15 Q. How do we know what time it was?

16 A. Well, I know it was between 4:00 and
17 4:30.

18 Q. How?

19 A. Because at 4:30 Dave called me and I
20 remember I looked at the -- well, that was about --
21 it was at 4:42 when Dave called me.

22 Q. Was it 4:30 or 4:42?

23 A. It was 4:42.

24 Q. How do you know that?

1 A. Because that I wrote down.

2 Q. From looking at your memo, huh?

3 A. No, I didn't. I didn't look at it,
4 but I do remember that.

5 Q. Well, you said 4:30, then you looked
6 at your memo, then you said 4:42, correct?

7 A. I didn't look at the memo. But I did
8 say 4:30 first. But it was 4:42.

9 Q. How did you make the move from 4:30
10 to 4:42?

11 A. Because that's what time it was. I do
12 remember when Dave called I looked at the clock and
13 it was at 4:42.

14 Q. When did you write this memo, Exhibit
15 No. 1?

16 A. Shortly before 5:00.

17 Q. At the end of your day?

18 A. Yes.

19 Q. Okay. Now, you text message back to
20 Mr. Andreu on his route. What was the content of
21 the message?

22 A. I need you to go to Bernina now.

23 Q. Anything else?

24 A. No.

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF W I L L)
3

4 I, Tamara Manganiello, a notary public
5 within and for the County of Will and State of
6 Illinois, do hereby certify that heretofore, to-wit,
7 on the 26th day of July, A.D., 2007, personally
8 appeared before me at Suite 850, 29 South LaSalle
9 Street, in the City of Chicago, County of Cook and
10 State of Illinois, CHERYL BAST, a witness, called by
11 the Plaintiff in a certain cause now pending and
12 undetermined, wherein JOSE ANDREU is the plaintiff
13 and UNITED PARCEL SERVICE, INC., is the defendant.

14 I further certify that the said
15 witness, CHERYL BAST, was by me first duly sworn to
16 testify the truth, the whole truth and nothing but
17 the truth in the cause aforesaid; that the testimony
18 then given by her was by me reduced to writing by
19 means of shorthand in the presence of said witness
20 and afterwards transcribed upon a computer, and the
21 foregoing is a true and correct transcript of the
22 testimony so given by her as aforesaid.

23 I further certify that the reading and
24 signing of said deposition was reserved by the

1 witness.

2 I further certify that the taking of the
3 deposition was pursuant to notice, and that there
4 were present at the taking of the deposition the
5 aforementioned parties.

6 I further certify that I am not counsel
7 for nor in any way related to any of the parties to
8 this suit, nor am I in any way interested in the
9 outcome thereof.

10 In testimony whereof I have hereunto set
11 my hand and affixed my notarial seal this 21st of
12 August, A.D., 2007.

13
14
15 TAMARA MANGANIELLO, RPR
16 Illinois License No. 084-004560
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23
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DEL DOTTO DEPOSITION EXCERPTS

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDREU,)	
)	
Plaintiff,)	
)	
vs.)	No. 07 C 0473
)	
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

The deposition of MELISSA DEL DOTTO, called by the Plaintiff for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before MARGARET R. BEDDARD, a Notary Public within and for the County of Kane, State of Illinois, and a Certified Shorthand Reporter of said state, at Suite 850, 29 South LaSalle Street, Chicago, Illinois, on the 31st day of July, A.D. 2007, at 10:53 a.m.

1 conversations --

2 A. Conversations, yes.

3 Q. Let me get my question out.

4 A. I'm sorry.

5 Q. Then you can answer. Okay?

6 A. Okay.

7 Q. Let me go again.

8 Mr. Coffey asked you some questions about
9 some conversations with Dave Ziltz, correct?

10 A. Yes.

11 Q. He asked you about conversations you had
12 with Mr. Ziltz regarding Mr. Andreu's injury.

13 Do you recall that?

14 A. Yes.

15 Q. I think he may have asked this, but I don't
16 recall.

17 Do you remember how many conversations you
18 had with Mr. Ziltz specifically about Mr. Andreu's
19 January 24 injury?

20 A. Just one.

21 Q. Do you remember about when that
22 conversation happened?

23 A. A couple days after he got injured.

24 Q. So close to January 24?

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF K A N E)

3 I, MARGARET R. BEDDARD, a Notary Public
4 within and for the County of Kane, State of Illinois,
5 and a Certified Shorthand Reporter of said state, do
6 hereby certify:

7 That previous to the commencement of the
8 examination of the witness, the witness was duly
9 sworn to testify the whole truth concerning the
10 matters herein;

11 That the foregoing deposition was reported
12 stenographically by me, was thereafter reduced to a
13 printed transcript by me, and constitutes a true
14 record of the testimony given and the proceedings
15 had;

16 That the said deposition was taken before me
17 at the time and place specified;

18 That the reading and signing by the witness
19 of the deposition transcript was agreed upon as
20 stated herein;

21 That I am not a relative or employee or
22 attorney or counsel, nor a relative or employee of
23 such attorney or counsel for any of the parties
24 hereto, nor interested directly or indirectly in the

1 outcome of this action.

2 IN WITNESS WHEREOF, I do hereunto set my
3 hand and affix my seal of office at Chicago,
4 Illinois, this _____ day of August, 2007.

5

6

7

8

Notary Public, Kane County, Illinois
My commission expires July 29, 2007

9

10 CSR Certificate No. 84-3565

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SNYDER DEPOSITION EXCERPTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDREU,)
)
Plaintiff,)
)
vs.) No. 07 C 0473
)
UNITED PARCEL SERVICE, INC.)
)
Defendant.)

The deposition of KERRY SNYDER called by
the Plaintiff for examination pursuant to notice and
pursuant to the Federal Rules of Civil Procedure for
the United States District Courts pertaining to the
taking of depositions, taken before Denise Andras,
Certified Shorthand Reporter and Notary Public
within and for the County of Cook and State of
Illinois at 29 South LaSalle, Illinois, on the 11th
day of July, A. D., 2007.

1 your actual findings from the truck?

2 A. Correct.

3 Q. And there was no doubt from that
4 comparison that there was a discrepancy?

5 A. Correct.

6 Q. And he was lying about this
7 information?

8 A. Correct.

9 Q. What happened to Mr. Petkov?

10 A. He was discharged.

11 Q. Did he file a grievance?

12 A. Yes.

13 Q. What happened after with the
14 grievance?

15 A. It was reduced to a suspension.

16 Q. Do you know if he is still working?

17 A. I don't know.

18 Q. Was he working at the time that you
19 left Joliet center?

20 A. Yes.

21 Q. What was his position?

22 A. Package car driver.

23 Q. Did you take part in any grievance
24 meetings or arbitrations with respect to Mr. Petkov?

1 A. Yes.

2 Q. How many?

3 A. One.

4 Q. Just a meeting?

5 A. Yes.

6 Q. At that point, was that the point that
7 it was reduced?

8 A. Yes.

9 Q. So what was your position with respect
10 to that, in that meeting, in the grievance meeting
11 with Mr. Petkov?

12 A. I don't quite understand "my
13 position".

14 Q. You say his termination was reduced to
15 a suspension, correct?

16 A. Correct.

17 Q. And that's something that you must
18 have authorized or okayed, correct?

19 A. Actually the lead person there, the
20 lead individual there would be the labor department
21 was involved in it.

22 Q. And who was the lead person for the
23 labor department at that point, Joliet center?

24 A. It was I believe Tom Hefke.

1 Q. But you recall a meeting where you are
2 getting your information from Dave Ziltz where he
3 comes back with his truck on the evening of February
4 9th?

5 A. Yes.

6 Q. Where was that at?

7 A. That was in my office.

8 Q. And you and Mr. Ziltz -- nobody else
9 present?

10 A. Yes, I don't remember anybody else.

11 Q. What was said by Mr. Ziltz?

12 A. He just recapped the incident.

13 Q. Do you remember anything specific or
14 have a specific recollection with anything
15 Mr. Ziltz said in this meeting?

16 A. Just that he went out there to look
17 into Jose -- went out there and met up with Jose
18 Andreu and he had, like at that point in time, I
19 thought he said he had less than 20 stops left.

20 Q. And you think that's what he said or
21 that's what he said?

22 A. I am not a hundred percent sure.

23 Q. So you don't specifically remember but
24 that's your belief?

1 Q. What else is said in your meeting with
2 Mr. Ziltz on the evening of February 9th?

3 A. I don't remember.

4 Q. When do you make the decision that you
5 are going to have a meeting the following morning
6 and put him on notice of termination?

7 A. I believe it was at this meeting.

8 Q. When you are talking to Mr. Ziltz?

9 A. Yes.

10 Q. The notice of termination, that's what
11 you conclude, correct?

12 A. Not necessarily at that -- not
13 necessarily like that.

14 Q. Okay, I don't want to put words in
15 your mouth. How did you conclude -- you said at
16 this meeting you made your decision to put him on
17 notice of termination?

18 A. At this meeting Dave Ziltz presents
19 the facts. I've only got one side of the story, and
20 I don't have Jose Andreu's side of the story until
21 we meet on the 10th.

22 Q. Okay. So it's your testimony that you
23 don't decide to put him on notice of termination
24 until you meet with Jose Andreu on the 10th in the

1 morning?

2 A. Correct.

3 Q. So in the meeting on the 10th you make
4 the decision to put him on notice of termination?

5 A. Correct.

6 Q. Not before?

7 A. No, not before.

8 Q. What else do you do prior to the
9 meeting on the 10th to look into the situation,
10 investigate the situation?

11 A. I don't remember doing anything else.

12 Q. During the day Ms. Bast had been in
13 your office, and you had your exchange with her that
14 we talked about, correct?

15 A. Yes.

16 Q. Then at night Mr. Ziltz comes in and
17 you have your talk with him that we've already
18 talked about, correct?

19 A. Yes.

20 Q. What else, if anything, any other
21 discussion, any other information, that you have
22 prior to going into your meeting on February 10th in
23 the morning?

24 A. I don't know if there's any other -- I

1 the situation warranted, yes.

2 Q. Well, the situation is the information
3 you have as if he comes to you on February 9th, and
4 we've covered that, was this an appropriate
5 statement if it was made?

6 A. Yes, I believe it would be an
7 appropriate statement, yes.

8 Q. From Mr. Ziltz to make that
9 statement, that decision, right there and then
10 without even conferring with you?

11 A. Yes.

12 Q. But does he have authority to
13 recommend as of -- what was his position, an on-road
14 supervisor?

15 A. Yes.

16 Q. Does he have authority to -- he
17 doesn't have termination authority, right?

18 A. In some capacities supervisors have
19 termination authorities. I did as a supervisor in
20 Peru.

21 Q. I am talking about Ziltz as a
22 supervisor underneath you at the Aurora center, did
23 he have authority to terminate under you?

24 A. Still, yes, but out of courtesy he

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3 I, Denise A. Andras, a Notary Public within
4 and for the County of Cook and State of Illinois,
5 and a Certified Shorthand Reporter of said state, do
6 hereby certify that heretofore, to-wit, on the 11th
7 day of July, 2007, KERRY SNYDER personally appeared
8 before me at 29 South LaSalle Street, in the City of
9 Chicago, in the County of Cook and State of
10 Illinois, a witness in a certain cause now pending
11 and undetermined, wherein Jose Andreu is the
12 Plaintiff and UPS is the Defendant.

13 I further certify that the said witness was
14 first duly sworn to testify the truth, the whole
15 truth and nothing but the truth in the cause
16 aforesaid; that the testimony then given by said
17 witness was reported stenographically by me, in the
18 presence of said witness, and afterwards reduced to
19 typewriting by Computer-Aided Transcription, and the
20 foregoing is a true and correct transcript of the
21 testimony so given by said witness as aforesaid.

22 I further certify that the signature of the
23 witness to the foregoing deposition was not waived
24 by agreement of counsel for the respective parties;

1 and that I am not counsel for nor in any way related
2 to any of the parties to this suit nor am I in any
3 way interested in the outcome thereof.

4 In witness whereof, I have hereunto set my
5 hand and affixed my notarial seal this _____ day of
6 _____, 2007.

7
8
9 _____
10 Notary Public, Cook County, Illinois
11 C.S.R. License No. 084-003437
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ZILTZ DEPOSITION EXCERPTS

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDREU,)	
)	
Plaintiff,)	
)	
-vs-)	No. 07 C 0473
)	
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	

The deposition of DAVID ZILTZ, called by the Plaintiff, for examination, taken pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Tamara Manganiello, Registered Professional Reporter and Notary Public, at Suite 850, 29 South LaSalle Street, Chicago, Illinois, on the 26th day of July, A.D., 2007, commencing at 11:04 a.m.

1 A. Yes.

2 Q. On January 24th?

3 A. Yes.

4 Q. Okay. What did he say to you then in
5 the morning?

6 A. He did not want to do that route. Did
7 not want to.

8 Q. Did he tell you why?

9 A. Just it was full, the load was heavy.
10 That's it.

11 Q. He said I don't want to do the route,
12 it is full and the load is heavy?

13 A. Yes.

14 Q. Did he say I'm not feeling well, I
15 don't feel very strong today, I feel an ailment
16 today, anything?

17 A. No.

18 Q. What did you say?

19 A. That he needed to do the route. It
20 was the route he was on.

21 Q. Okay. Had you ever heard anything
22 like this from Jose in the past before January 24th,
23 '05?

24 A. No.

1 it's in the morning and they tell you that he's been
2 hurt?

3 A. Yes.

4 Q. And you immediately have doubts?

5 A. Yes.

6 Q. Anything else that we haven't covered
7 that leads you to have some doubts?

8 A. No.

9 Q. Just things he said to you that
10 morning?

11 A. Yes.

12 Q. And then when you arrive at his truck,
13 do you express these doubts to him?

14 A. Yes.

15 Q. What do you say?

16 A. I don't recall.

17 Q. Did you accuse him of not being
18 sincere in the injury in some fashion?

19 A. I don't know.

20 Q. You may have?

21 A. I may have.

22 Q. Did you accuse him of lying?

23 A. No.

24 Q. Are you sure?

1 A. No.

2 Q. So you still have the doubts then
3 after you leave him that day?

4 A. Yes.

5 Q. Anything else said when you go out to
6 the truck after he has reported his injury?

7 A. I don't recall.

8 Q. Did you accuse him of faking? Did you
9 use that word?

10 A. I don't recall.

11 Q. You may have?

12 A. Don't know.

13 Q. So you may have used it, if you don't
14 know, that's what that means to me. Correct?

15 A. Yes.

16 Q. But you're sure you didn't say lying?

17 A. Yes.

18 Q. You're sure --

19 A. Yes.

20 Q. -- or you don't know? I'm sorry?

21 A. Yes.

22 Q. You're sure about lying, you're not
23 sure about faking, correct?

24 A. Correct.

1 A. Those are my main responsibilities.

2 Q. Do you have supervisory authority to
3 discipline employees?

4 A. Yes.

5 Q. Okay. In what sorts of ways do you
6 discipline employees?

7 A. I talk with, document.

8 Q. How do you document?

9 A. An employee record. I will talk with
10 a driver who has not followed the methods, let's
11 say, miss-delivered a package. First time, it's a
12 talk-with. It's not written down. The second time
13 it's a talk-with and it's documented in their
14 employee record. The third time we give a verbal
15 warning. It's a progressive discipline.

16 Q. When you say document employee record,
17 what does that involve?

18 A. Just with the employee there, if he
19 wants the union steward there, I will document my
20 name, Dave Ziltz, talked with the driver's name in
21 regards to verifying their next status before they
22 leave in the morning.

23 Q. Is this a note that you make
24 somewhere?

1 A. No, it didn't click.

2 Q. But you still have the doubts about
3 the accident?

4 A. He went to seek medical attention and
5 the doctor said he had a strain in his back, I
6 think. I don't recall. So at that point, you know,
7 my doubts are no longer doubts. I mean, the doctor
8 said something was wrong.

9 Q. You talked to a doctor?

10 A. No, I did not talk to a doctor.

11 Q. How do you know what the doctor says?
12 How do you know what Mr. Andreu's doctor had said at
13 any time?

14 A. After the 9th he was on restrictions.

15 Q. How do you know this?

16 A. Because he didn't work.

17 Q. So sometime after the 9th you find out
18 he's on restrictions?

19 A. Uh-huh.

20 Q. And are you telling me that eases your
21 doubts or changes your mind? What happens?

22 A. It eases my doubts.

23 Q. Did you follow-up with any doctors or
24 Mr. Andreu to do anything else to try to figure out

1 A. There were two times.

2 Q. What's the first time?

3 A. The first time I was in a package car
4 with packages in it. It was called a meet point,
5 dividing those packages up amongst the proper
6 routes. At that point, the driver who was doing
7 that route, Coveny's route, Matt Sanderson, reported
8 to me the he fell out of the back of the truck on
9 his knee, which he had prior surgery on outside of
10 UPS. We went our ways. A little while later he
11 called me and said my knee is really swelling up, I
12 need to go to the doctor, to the clinic. So at that
13 point, I relieved him.

14 Q. And he was doing Gary Coveny's route?

15 A. Yes.

16 Q. So now you're doing Gary Coveny's
17 route?

18 A. Now I'm doing the route.

19 Q. Was Mr. Andreu there, present?

20 A. At the meet point, yes.

21 Q. What was he doing there?

22 A. Taking packages that belonged to that
23 route. That's what the meet point was, things were
24 left -- packages were left in the building and

1 weren't dispatched and I was meeting several
2 drivers.

3 Q. What other drivers were there?

4 A. I don't recall. I know Matt and I
5 know --

6 Q. Did you have any discussions directly
7 with Mr. Andreu at the meet point?

8 A. No.

9 Q. Were there any issues at that point in
10 time?

11 A. No.

12 Q. Was there any issues in getting him to
13 come to the meet point?

14 A. No.

15 Q. And he took additional packages out of
16 the meet point, correct?

17 A. Yes.

18 Q. So there was no problems getting him
19 to pick up these additional packages --

20 A. No.

21 Q. -- at the meet point?

22 A. No.

23 Q. What time of day was this?

24 A. I don't recall. I -- 2:00 o'clock.

1 Q. And then you have a second occasion to
2 see him on the route later that day, correct?

3 A. Yes.

4 Q. Prior to meeting him later that day,
5 do you have communications with -- what is your
6 first indication or notification that there's some
7 issue with Mr. Andreu and this Bernina pick-up?

8 A. As I said, I relieved Matt on the
9 route, I was doing that delivery route. The driver
10 whose pick up Bernina is on was Laura Martinez.
11 She's a very good driver. And there was someone on
12 the adjacent route that didn't know the route well,
13 was in need of help, was not going to finish the
14 day. Cheryl, you know, called me. I said, you
15 know, ask Laura to help. The particular person, I
16 don't remember who that was. And Cheryl called me
17 back and said will Laura help, but we need to cover
18 Bernina. And then at that point I say have Jose
19 pick up Bernina.

20 Q. Did she tell you in this conversation
21 that she had already notified Jose and he was giving
22 some resistance?

23 A. That was prior to that.

24 Q. Okay. So you get -- is this a phone

1 A. Correct.

2 Q. What time of day was this?

3 A. Approximately 4:00.

4 Q. Okay. And your response to her was
5 what?

6 A. To have Jose pick it up.

7 Q. Why Jose?

8 A. Because it's an excess route. It has
9 no pick-ups assigned to it.

10 Q. Didn't he have another pick-up earlier
11 that day?

12 A. Maybe a residential pick-up. But that
13 type of route is designed to take work off the other
14 routes when they're too heavy, does not have a
15 pick-up route, so when we have to disburse it, we
16 don't have to disburse pick-ups.

17 Q. When that route is not too heavy; is
18 that right?

19 A. Yes.

20 Q. Well, if it's 190 stops that he, in
21 fact, did that day, that's certainly well within the
22 average of that route, right?

23 A. Correct.

24 Q. Is it on the high side of the average

1 A. At that point and seeing his truck
2 earlier, I found that hard to believe. So I said
3 send him to the pick-up now. I was on the route
4 across the street. And she sent him there and I was
5 waiting out in front of the pick-up on the street.

6 Q. So you had already gotten to
7 Bernina --

8 A. Yes.

9 Q. -- by the time he shows up?

10 A. Oh, yes.

11 Q. How much time elapses between your
12 call with Cheryl and the time you meet Jose?

13 A. Ten, 15 minutes max.

14 Q. Do you have any notes of this in terms
15 of the times of that day?

16 A. I do not.

17 Q. Did you write them down at all that
18 day?

19 A. No.

20 Q. Have you ever written them down?

21 A. No.

22 Q. So your ten to 15 minutes is your best
23 estimate as you sit here today?

24 A. Yes.

1 there?

2 A. I had him open up his bulkhead door,
3 which is the door behind the driver, and I counted
4 the packages in his car.

5 Q. You physically counted each and every
6 package?

7 A. I counted like this (indicating). I
8 looked at the shelf and counted like that.

9 Q. Okay. So you didn't go through each
10 package, move it aside, one, two?

11 A. Did not.

12 Q. Your standing by the driver's seat?

13 A. I went into the bulk area.

14 Q. What's the bulk area?

15 A. Went into the back of the package car.

16 Q. And you're counting with your finger?

17 A. Yes.

18 Q. Okay. And what happens next?

19 A. I counted about 20 packages. I asked
20 Jose where the 60 packages were, the 60 stops. I
21 shared my frustrations with him with everything
22 going on in the area, a person getting hurt, a
23 person needing help, we need to pitch together, this
24 and that. I don't recall my exact words at that

1 point, if I mentioned dishonesty to him, but very
2 well could have. It was a dishonest act. It's in
3 the contract. I don't know. I don't recall words.
4 And at that point I told him to make the pick-up,
5 finish his work and get back into the building and
6 went on.

7 Q. Okay. Let's take those one at a time.
8 So about 20 packages is what you counted?

9 A. Yes.

10 Q. Could have been a little more? Could
11 have been a little less actually?

12 A. Yes.

13 Q. Did you ask Jose at that time about
14 his -- you just heard from Cheryl this 60 package
15 thing, right? You heard that through Cheryl Bast?

16 A. Yes.

17 Q. Jose never told you 60 packages --

18 A. No.

19 Q. -- correct? Okay.

20 So did you then ask Jose -- did
21 you say something about 60 packages to Jose?

22 A. I said where are the 60 stops you told
23 Cheryl you had?

24 Q. What does he say?

1 Q. So he wouldn't have been done until
2 9:00 then?

3 A. No. Would have been done earlier
4 without doing the work. I would assume with 20-some
5 stops left in that area, that's average on that
6 route, 19, 22 stops an hour by various drivers, that
7 would have been an hour's worth of work at 4:00,
8 so...

9 Q. He's getting paid for this work,
10 correct?

11 A. Correct.

12 Q. And this would have been an hour of
13 overtime, right?

14 A. Yes.

15 Q. Okay. And he's getting paid
16 time-and-a-half?

17 A. Uh-huh.

18 Q. So he's jipping himself out of that
19 money, correct?

20 A. Uh-huh.

21 Q. Had you ever, prior to February 9th,
22 2005, known Mr. Andreu to try to skimp out of work,
23 cut work early, leave work early, anything?

24 A. No, I have not.

1 Q. Okay. And you talked to him on the
2 phone --

3 A. Yes.

4 Q. -- and you say what?

5 A. I said if he has anybody in the car,
6 you know, which he denied, I said you need to get
7 them out now. And then that was the end of the
8 conversation. I reported it to Tim Pope and then it
9 went from there.

10 Q. What happened?

11 A. I believe he was terminated.

12 Q. Are you sure?

13 A. I know he was -- I know he was out of
14 work. I think he was terminated for -- until the
15 grievance procedure went through and then he's back.

16 Q. Now he's back?

17 A. He's back at work.

18 Q. Who was the driver that reported --
19 was this an eyewitness, somebody who actually saw an
20 unauthorized passenger in his car?

21 A. Thought he saw a passenger, yes.

22 Q. Well, I mean, did you talk to this
23 other driver?

24 A. Yes.

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF W I L L)
4

5 I, Tamara Manganiello, a notary public
6 within and for the County of Will and State of
7 Illinois, do hereby certify that heretofore, to-wit,
8 on the 26th day of July, A.D., 2007, personally
9 appeared before me at Suite 850, 29 South LaSalle
10 Street, in the City of Chicago, County of Cook and
11 State of Illinois, DAVID ZILTZ, a witness, called by
12 the Plaintiff in a certain cause now pending and
13 undetermined, wherein JOSE ANDREU is the plaintiff
14 and UNITED PARCEL SERVICE, INC., is the defendant.

15 I further certify that the said witness,
16 DAVID ZILTZ, was by me first duly sworn to testify
17 the truth, the whole truth and nothing but the truth
18 in the cause aforesaid; that the testimony then
19 given by him was by me reduced to writing by means
20 of shorthand in the presence of said witness and
21 afterwards transcribed upon a computer, and the
22 foregoing is a true and correct transcript of the
23 testimony so given by him as aforesaid.

24 I further certify that the reading and
signing of said deposition was reserved by the

1 witness.

2 I further certify that the taking of the
3 deposition was pursuant to notice, and that there
4 were present at the taking of the deposition the
5 aforementioned parties.

6 I further certify that I am not counsel
7 for nor in any way related to any of the parties to
8 this suit, nor am I in any way interested in the
9 outcome thereof.

10 In testimony whereof I have hereunto set
11 my hand and affixed my notarial seal this 21st of
12 August, A.D., 2007.

13
14
15 TAMARA MANGANIELLO, RPR
16 Illinois License No. 084-004560
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